



RECEIVED

2004 JAN 16 PM 1:21

BellSouth Telecommunications, Inc.
333 Commerce Street
Suite 2101
Nashville, TN 37201-3300

joelle.phillips@bellsouth.com

January 16, 2004

Joelle J. Phillips
Attorney
615 214 6311
Fax 615 214 7406

T.B.A. DCKET ROOM

VIA HAND DELIVERY

Hon. Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Enforcement of Interconnection Agreement between BellSouth
Telecommunications, Inc. and ITC^DeltaCom Communications, Inc.*

*Enforcement of Interconnection Agreement between BellSouth
Telecommunications, Inc. and XO Tennessee, Inc.*

Docket No. 02-01203

Dear Chairman Tate:

Enclosed are the original and fourteen copies of BellSouth's *Reply to the Response of XO Tennessee, Inc. and ITC^DeltaCom Communications, Inc.* in the referenced matter. Copies of the enclosed are being provided to counsel of record.

Cordially,

Joelle Phillips

JJP:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

Re: *Enforcement of Interconnection Agreement between BellSouth
Telecommunications, Inc. and ITC^DeltaCom Communications, Inc.*

*Enforcement of Interconnection Agreement between BellSouth
Telecommunications, Inc. and XO Tennessee, Inc.*

Docket No. 02-01203

BELLSOUTH TELECOMMUNICATIONS, INC.'S REPLY TO
RESPONSE OF XO TENNESSEE, INC. AND
ITC^DELTACOM COMMUNICATIONS, INC.

BellSouth Telecommunications, Inc. ("BellSouth") submits the following *Reply* to the *Response* of XO Tennessee, Inc. ("XO") and ITC^DeltaCom Communications, Inc. ("DeltaCom") (collectively, "the CLECs") in this matter.

The CLECs' *Response* breaks no new ground. Rather, it is clear from all the parties' filings that this matter turns on one primary legal issue: Does the interconnection agreement between the parties govern and establish the rights and obligations regarding an audit or do certain FCC orders (the *Supplemental Order Clarification* or the *Triennial Review Order*) supplant the parties' agreement?

The answer to that question is clear. The parties' interconnection agreements govern their relationships. The entire point of negotiated interconnection agreements is the ability of parties to choose which obligations they will undertake and which they will not. BellSouth is not suggesting that legal orders can *never* override contractual agreements between parties. However, in the present case, it is clear that neither the *Supplemental Order Clarification* nor the *Triennial Review Order* includes terms

indicating the intent of the FCC to override negotiated interconnection agreements entered into between telecommunications carriers. To the contrary, in fact, the language of the *Supplemental Order Clarification* specifically establishes that it does not supplant the parties' agreements.

Notwithstanding BellSouth's repeated citation of this language in the *Supplemental Order Clarification*, the CLECs have offered no explanation for ignoring this language and contending instead that the *Supplemental Order Clarification* and the subsequent *Triennial Review Order* replace or alter the parties' interconnection agreements. Instead, the CLECs have simply ignored the *Supplemental Order Clarification's* language.

BellSouth seeks only to have the benefit of its bargain under the interconnection agreements and also takes a position consistent with the compromise the FCC struck in its *Supplemental Order Clarification*. (As discussed in BellSouth's earlier *Motion and Response*, that FCC compromise was to afford immediate access to EELs for CLECs on the one hand, and to provide audit rights to ILECs on the other. These CLECs want it all – immediate access to EELs and to be free from the very audits to which they agreed.) Nothing in the *Triennial Review Order* or the *Supplemental Order Clarification* undermines BellSouth's ability to rely on its interconnection agreement.

As a practical matter, XO and DeltaCom seek to avoid the very audit terms to which they agreed after the *Supplemental Order Clarification* was released. If they prevail, then neither BellSouth nor the TRA will ever know whether the CLECs have obtained EELs to which they were not entitled. Applying the agreed terms of the interconnection agreement results in the fair and reasonable process to which these

parties agreed. Specifically, if the audits demonstrate that the EELs were properly obtained, then BellSouth will bear the cost of the audits. This reasonable agreement, reached by the parties with respect to audits, is what the parties are entitled to rely upon.

For these reasons, BellSouth respectfully urges the hearing officer to grant BellSouth's *Motion for Summary Judgment* and to deny the *Motion* of XO and DeltaCom.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

Guy M. Hicks
Joelle J. Phillips
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300
615/214-6301

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2004, a copy of the foregoing document was served on the following, via the method indicated:

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Henry Walker, Esquire
Boult, Cummings, et al.
414 Union Street, #1600
Nashville, TN 37219-8062
hwalker@boultcummings.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Nanette S. Edwards, Esquire
ITC^DeltaCom
4092 South Memorial Parkway
Huntsville, AL 35802
nedwards@deltacom.com

A handwritten signature in cursive script, appearing to read "J. Walker", is written over a horizontal line.